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7590

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 06/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,684

Applicant(s)

Hordetal

Examiner

d. shay

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on January 10, 2001
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 11-19 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 11-19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Doss et al.

Doss et al teaches a device which can deliver energy at 100kHz-10MHz (see column 3, lines 46-51), with a ground pad (see figure 1, element 36 and column 3, lines 41-44), a connector arrangement as claimed (see elements 12, 16 and 20 or 12, 26 and 28 in figure 5) and a stop (see element 42 figure 5). Doss et al also teach the application of power in bursts of "about one second" (see column 3, line 50) as well as the typical corneal thickness and desired temperature ranges to heat the tissue (see column 1, lines 38-68).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11, 13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schachar in combination with Doss et al. Schachar teaches a system for heating the corneal stroma including a probe tip which is heated to heat the stroma wherein the last 300 to 600 microns is considered to be the tip and the shaft of the probe is considered a "spring beam" since its function is to help maintain contact

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with the tissue to be heated; and to maintain the power level at or below 1.2, watts, since the desired temperature changes to produce the effects are known, and thus the appropriate wattage would also be known, further the exact power level and duration being dependent on probe geometry and configuration, and the probe geometry of Schachar being the same as that of applicants probe, the power requirement would be the same. Doss et al teach the desired temperature for shrinkage of tissue and the use of RF in the claimed frequency and time exposure range to provide the shrinkage. It would have been obvious to the artisan of ordinary skill to employ the power supply of Doss et al in the device of Schachar since Schachar.

Schachar teaches no particular supply to energize the probe or, alternatively to employ the probe configuration of Schachar in the device of Doss et al, since this configuration, to would concentrate the heat in the stromal tissue, thus producing a device such as claimed.

1. Claims 11, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schachar in combination with Doss et al as applied to claims 11, 13, 16 and 18 above, and further in view of Malis et al. Malis et al teach the use of a pulsed periodic damped waveform for coagulation. It would have been obvious to the artisan of ordinary skill to employ a damped waveform in the device of Schachar or Doss et al, since these are the preferred waveforms for coagulation, is shown by Malis et al and to employ the claimed pulse rate, since the pulse rate of Malis et al is only set forth as exemplary and since the claimed range as not critical and produces no unexpected result, thus producing a device such as claimed.

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Any inquiry concerning this communication should be directed to David Shay at
telephone number (703) 308-2215

David Shay:bhw

May 22, 2002



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330